

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Harry D. Leinenweber	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 976	DATE	9/18/2002
CASE TITLE	Miranda O'Neal vs. Altheimer & Gray, et al		

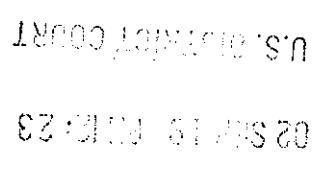
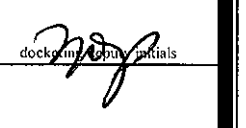
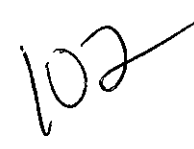
[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] ENTER MEMORANDUM OPINION AND ORDER: Defendant Altheimer & Gray's Bill of Costs is GRANTED IN PART. The Defendant is awarded total costs of \$4,893.80 as follows: (1) \$3,360.50 in deposition transcript fees; (2) \$320.00 in witness fees; (3) \$725.00 for subpoena service fees; (4) \$488.30 for both internal and external copying fees.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	<div style="text-align: center;">  </div>	number of notices	<div style="text-align: center;">  </div>	Document Number
<input type="checkbox"/>	No notices required.		SEP 20 2002		<div style="text-align: center;">  </div>
<input type="checkbox"/>	Notices mailed by judge's staff.		date docketed		
<input type="checkbox"/>	Notified counsel by telephone.		docketing deputy initials		
<input checked="" type="checkbox"/>	Docketing to mail notices.		date mailed notice		
<input type="checkbox"/>	Mail AO 450 form.			mailing deputy initials	
<input type="checkbox"/>	Copy to judge/magistrate judge.				
<div style="display: flex; justify-content: space-between;"> <div>WAP</div> <div>courtroom deputy's initials</div> </div>		Date/time received in central Clerk's Office			

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS SEP 18 2002
EASTERN DIVISION

Judge Harry D. Leinenweber
U. S. District Court

MIRANDA O'NEAL,

Plaintiff,

v.

ALTHEIMER & GRAY, TERRY SCHLADE
and LOUIS GOLDMAN,

Defendants.

Case No. 99 C 0976

Hon. Harry D. Leinenweber

DOCKETED

SEP 20 2002

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant's Petition for Costs which it timely filed after this Court granted summary judgment in favor of Altheimer & Gray, Terry Schlade, and Louis Goldman (collectively "A&G"). A&G requests that Plaintiff be taxed \$9,216.09 in costs pursuant to 28 U.S.C. § 1920; FED. R. CIV. P. 54(d); and Local Rule 54.1. The Plaintiff raises numerous objections to the items claimed in Defendant's Bill of Costs.

DISCUSSION

FED. R. CIV. P. 54 (d) provides "costs shall be allowed as of course to the prevailing party unless the court otherwise directs." 28 U.S.C. § 1920 specifies the costs that may be recovered pursuant to Rule 54(d). *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441 (1987). The costs explicitly allowed by § 1920 are: (1) fees of the clerk; (2) fees for transcripts; (3) fees for

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printing and witnesses; (4) fees for copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court-appointed experts and interpreters.

Rule 54(d) creates a presumption favoring the award of costs to the prevailing party. *Coyne-Delany Co., Inc. v. Capital Development Bd.*, 717 F.2d 219, 222 (7th Cir. 1988). However, district courts possess wide discretion in determining whether expenses claimed by the prevailing party are actually taxable as costs. *Deimer v. Cincinnati Sub-Zero Products, Inc.*, 58 F.3d 341, 345 (7th Cir. 1995). This court must review a prevailing party's bill of costs in scrupulous detail. As the Supreme Court has explained, Rule 54(d) does not give a court "unrestrained discretion to tax costs to reimburse a winning litigant for every expense he has seen fit to incur . . . [I]tems proposed by winning parties as costs should always be given careful scrutiny." *Farmer v. Arabian Am. Oil Co.*, 379 U.S. 227, 235 (1964). Thus, Defendant A&G is entitled to recover costs only if (1) the expenses are allowed under § 1920, and (2) the expenses are reasonable, both in amount and necessity to the litigation. *Deimer*, 58 F.3d at 345.

The Defendant seeks recovery for the following in its Bill or Costs: (1) \$5,831.75 for deposition transcripts; (2) \$356.00 for witness fees; (3) \$725.00 for subpoena service charges; (4)

\$1,719.00 for internal copy costs; and (5) \$584.34 for outside reproduction costs. The Plaintiff raises objections to all of the costs claimed by Defendant. The court will review each of the claims costs in turn.

Deposition Transcripts Fees

The Defendant requests that Plaintiff be taxed \$5,831.75 for transcript deposition fees of proceedings and depositions obtained for use in the case. The Plaintiff objects to the charges for the deposition fees of Janis Mang-Nick (\$348.85) and Rita Gerch (\$159.80) because of Defendant's failure to mention these two witnesses in their Motion for Summary Judgment. As Defendant highlighted, however, the Plaintiff noticed those witnesses, thus Defendant is allowed copies of those transcript depositions. *Int'l. Oil, Chemical and Atomic Workers, Local 7-517 v. The Uno-Ven Co.*, 1998 WL 895557 (N.D. Ill.)

As for the remainder of each of the fifteen deposition witnesses, Defendant includes the cost of various other items such as delivery, manuscript/keyword referencing, ASCII disk copying, e-transcription, etc. The court will only grant what has been designated by the Judicial Conference for allowable charges. VI JUDICIAL CONFERENCE OF THE UNITED STATES, GUIDE TO JUDICIARY POLICIES AND PROCEDURES, COURT REPORTERS MANUAL Ch. 20, pt. 20.8 (1988) ("Court

Reporters Manual"). See also, *Cengr v. Fusibond Piping Systems, Inc.*, 135 F.3d 445, 456 (7th Cir. 1998) (holding that Judicial Conference rates apply to deposition charges by private stenographer as well as court reporters). Therefore, the copy rate established by the Judicial Conference for regular original deposition transcripts is \$3.00 per page. This fee covers all costs of transcript production. *Id.* The copy rate established by the Judicial Conference for regular copies is \$0.75 per page. Additionally, the maximum per-page rate for condensed copies of a transcript is the same as that for a full-sized transcript. Furthermore, charges for ASCII diskettes of depositions transcripts or e-transcripts, which are merely for the attorney's convenience and not necessary to litigating the case, are not allowed. *Jones v. Bd. of Trustees of Community College Dist. No. 508*, 197 F.R.D. 363, 364 (N.D. Ill. 2000). For instances where the invoice lists no total number of pages transcribed, the court cannot determine if the charges are within the Judicial Conference guidelines, thus they are denied. Moreover, courier and Federal Express charges incurred in the course of litigation are generally disallowed, in view of the fact that "such expenses are generally considered overhead, or part of the cost of operating a law firm." See *Downes v. Volkswagen of America, Inc.*, 41 F.3d 1132, 1144 (7th Cir. 1994).

The following chart lists the amount allowed per deposition witness according to the established rates of the Judicial Conference:

Name	Amount Requested	Number Pages	Amount Granted
Janet Kyte - copy	\$ 206.60	88	\$ 66.00
Rita Gerch - copy	468.50	220	165.00
Rita Gerch II - copy	159.80	54	40.50
Janis Mang-Nick - original	348.85	91	273.00
Laura Marie Klos - copy	254.00	100	75.00
Paula Trumper - original	806.25	222	666.00
Paula Trumper - copy			166.50
Miranda O'Neal - original			
(expedited)	1,447.70	323	1,292.00
Louis Goldman - copy	322.15	77	57.75
Susanna Schlesinger -			
original	340.50	None	0.00
Terry M. Schlade - copy	220.75	67	50.25
Dorothy Jones - original	270.40	None	0.00
Reza Haghighat - original	249.00	None	0.00
Jalal Abtahi - original	234.00	48	144.00
Bonnie Lovette - original	421.60	110	330.00
Nancy Baranowski - copy	113.50	46	34.50
TOTAL:			\$ 3,360.50

Witness Fees

The Defendant seeks recovery of \$356.00 for witness fees for the following witnesses: \$50.00 for Laura Klos, \$56.00 for Paula Trumper, \$40.00 for Dr. Susana Schlesinger, \$40.00 for Dr. Jalal Abtahi, \$40.00 for Dr. Dorothy Jones, \$40.00 for Dr. Reza Haghighat, \$90.00 for Bonnie Lovette (also includes subpoena *duces tecum*). Witness fees are allowable under § 1920(3) pursuant to 28

U.S.C. § 1821. However, a "subsistence" fee is granted dependent upon the distance traveled. The Defendant has failed to list those witnesses that required extra "subsistence" or the exact distance traveled to be tabulated according to the maximum per diem allowance prescribed by 5 U.S.C. § 5702(a). Therefore, Defendant is allowed to tax only \$40.00 per witness fee for a total of \$ 320.00.

Subpoena Service Fees

The Defendant seeks \$725.00 for subpoena service fees. Pursuant to § 1920(1), subpoena service fees are taxable unless it is challenged as unreasonable or unnecessary. However, the court notes that Plaintiff does not clearly articulate why the service fees were unreasonable or unnecessary. See *Carpenter v. Ford Motor Co.*, 1993 WL 34831 (N.D. Ill.). Therefore, the court deems \$725.00 as reasonably taxable for subpoena service fees.

Copying Fees

The Defendant next requests recovery of \$1,719.00 for 11,460 various pages that were internally copied by A&G at \$0.15 per page. In addition, A&G asks for \$584.34 for external copying costs for various copying and Bates labeling.

The Defendant is entitled to recover the costs necessary for making necessary copies of necessary documents. Extra copies of

filed papers are not necessary. They are for the convenience of the attorneys, and so the cost of extra copies is not taxable. *Haroco, Inc. v. American Nat. Bank and Trust Co. of Chicago*, 38 F.3d 1429, 1441 (7th Cir. 1994). The Seventh Circuit has clearly stated that charges for in-house reproduction may not exceed the charges of an outside print shop. *Martin v. United States*, 931 F.2d 453, 455 (7th Cir. 1991). The Court notes that local print shops charge \$0.09 to \$0.10 per page for standard photocopying and finds that \$0.10 per page is a reasonable charge for both in-house and external copying.

Copying documents for production in discovery is clearly necessary and recoverable. For documents filed with the court, only copies for the court and one copy for opposing counsel are necessary. The cost of additional copies made for the convenience of counsel is not recoverable. Discovery requests and responses of original documents and copying costs for these items are not taxable.

The court will grant Defendant costs at \$0.10 for only those internal documents that were described with enough detail to be necessary for litigation. After sorting through A&G's Account Detail Sheet, only those marked discovery, motion or summary judgment and those within reasonable numerical amounts were

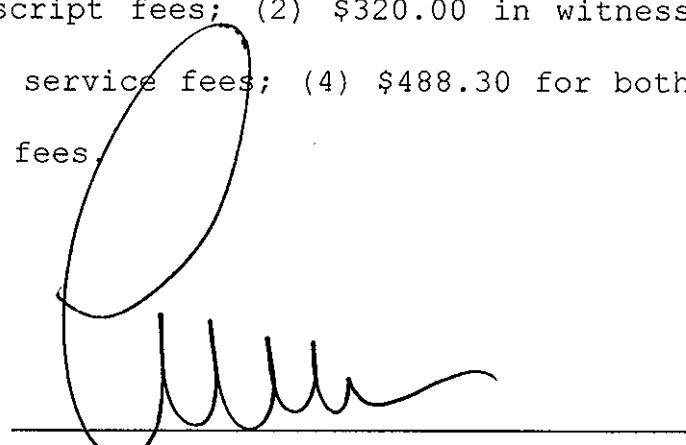
considered necessary for litigation. Upon the court's research through the Defendant's account sheet, the court finds that there were 1,952 pages necessary for litigation. Accordingly, Defendant is allowed to recover \$195.20 for internal copying.

The Defendant seeks \$584.34 for external copying costs and Bates labeling. Applying the court determined standard of \$0.10 in lieu of the receipt listed \$0.16 per page, the court recalculates the total number of 2,931 pages copied to be taxable for \$293.10.

CONCLUSION

Based on the standards and computations set forth above, Defendant Alzheimer & Gray's Bill of Costs is GRANTED IN PART. The Defendant is awarded total costs of \$4,893.80 as follows: (1) \$3,360.50 in deposition transcript fees; (2) \$320.00 in witness fees; (3) 725.00 for subpoena service fees; (4) \$488.30 for both internal and external copying fees.

IT IS SO ORDERED.



Harry D. Leinenweber, Judge
United States District Court

Date:

September 18, 2002